

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

v.

TONTE DEON WALKER

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**CIVIL ACTION NO. 1:08CV194-LG
CRIMINAL NO. 1:05CR94-LG-JMR-1**

**ORDER DENYING THE DEFENDANT'S
MOTION FOR RETURN OF PROPERTY**

BEFORE THE COURT is the Motion for Return of Property [57] filed by the defendant, Tonte Deon Walker. He seeks the return of \$714.00 in U.S. Currency, which was seized at the time of his arrest. The Government has responded to the Motion, arguing that Walker's money is not in the possession of the Government but is in the possession of the Biloxi Police Department. Upon reviewing the submissions of the parties and the applicable law, the Court finds that the Motion for Return of Property should be denied, because the money is not in the possession of the Government.

DISCUSSION

Walker was arrested by the Biloxi Police Department on September 13, 2005, for violation of a curfew imposed by the City of Biloxi after Hurricane Katrina. At the time of his arrest, he had cocaine, a firearm, and \$714.00 cash in his possession. He was convicted of all of the federal charges filed against him as a result of his possession of cocaine and a firearm. It is undisputed that the Government did not seek a forfeiture of the \$714.00 in cash.

A person aggrieved by the deprivation of property may file a motion for return of property pursuant to Fed. R. Crim. P. 41(g). Special Agent Joe Belisle of the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") signed an affidavit in which he states that the

\$714.00 was never taken into ATF custody, but was retained by the Biloxi Police Department. (Ex. B to Gov't's Resp.) Additionally, there is no evidence before the Court that indicates that the funds are in the possession of the Government. The Court cannot order the Government to return property that it does not possess. As a result, the Motion for Return of Property must be denied.

IT IS THEREFORE ORDERED AND ADJUDGED that the Motion for Return of Property [57] filed by the defendant, Tonte Deon Walker, is **DENIED**.

SO ORDERED AND ADJUDGED this the 16th day of July, 2009.

s/ *Louis Guirola, Jr.*
LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE